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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,023	11/30/2001	R. Sam Niedbala	044170-5034	6134
22204 7590 03/28/2007 NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			EXAMINER ALEXANDER, LYLE	
			ART UNIT 1743	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/28/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/997,023	<b>Applicant(s)</b> NIEDBALA ET AL.	
	<b>Examiner</b> Lyle A. Alexander	<b>Art Unit</b> 1743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-2,4,6-7, 9,12-23, 25, 46-52 and 73-78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2,4,6-7, 9,12-23, 25, 46-52 and 73-77 is/are rejected.
- 7) ☒ Claim(s) 78 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2,4,6-7, 9,12-23, 25, 46-52 and 73 –77 are rejected under 35

U.S.C. 102(e) as being clearly anticipated by Konecke (USP 6,663,831).

Konecke teach a sampling and testing device(20) comprising a sample collection and extraction area(22), a detection area(24) and a sample retaining well(26) that retains sample for other testing. Absorbent material(100) covers core(80) that transfers the extracted fluid to the test devices(155) in detection area(24) and to the sample retaining well(26). Cap(40) is placed over the absorbent material(100) and further comprises roller heads(70, 70A) that discharge the sample from the absorbent material(100). The claimed "holding portion" has been read on the device(20) and the claimed "retaining portion" has been read on the roller heads(70,70A) that have a first size(70) and a second size(70A). The claimed "expandable collector member" has been read on the absorbent material(100) and the "discharge member" has been read on the core(80). The claimed "blocking portion" has been read on cap(40) .

***Allowable Subject Matter***

Claim 78 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 1/3/07 have been fully considered but they are not persuasive.

Applicants' state Konecke does not teach a retaining portion that includes a discharge member spaced from the second end. The Office maintains the core(80) meets all of the claimed requirements. Applicants further state core(80) is separated by the absorbent material(100). These remarks do not appear to be commensurate with the instant claims that do not require separation from the absorbent material.

Applicants state Konecke fails to teach a retaining portion that has an extended size and a contracted size. The Office maintains Konecke teach the absorbent material(100) swells to a first size when filled with sample and has a second size when the sample is squeezed out.

Applicant's state Konecke fails to teach collection of a sufficient amount of sample in the second collector such it is substantially equal to the retaining portion extended size. It is not clear if this is an actual structural limitation or a method of use that is of no patentable moment with respect to the pending claims. To further the prosecution, the Office has considered this limitation to mean the second collector expands to a second size that is clearly taught by Konecke.

Applicant's state Konecke fails to teach a discharge portion spaced from the retaining portion. The Office maintains Konecke teaches absorbent(100) spaced from discharge portion(80).

Applicants state Konecke fails to teach a retaining portion at the second end. The Office maintains Konecke teach retaining well(24) at the opposite end of absorbent portion and is indistinguishable from the instant claims.

Applicants state Konecke fails to teach a blocking portion on the retaining portion. As the claim is presently written it is difficult to understand what is the structure of the blocking portion. Is the blocking portion(78) ? If so, clarification might state the blocking portion engages the holding portion when the absorbent portion is the second size extracting the sample. Such amendments if submitted in a timely manner may overcome the art of record. However, in the absence of better clarification of the language, the Office has read the retaining portion on the taught cap(40).

Applicants state Konecke does not teach a retaining portion including walls spaced at a first and second lengths. Konecke teaches roller heads(70,70A) that are at different lengths.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander  
Primary Examiner  
Art Unit 1743



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